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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,041	01/29/2004	Ramiro Arrez	0343-0036	4828

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EXAMINER

FOX, CHARLES A

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/767,041	Applicant(s) ARREZ ET AL.	
	Examiner Charles A. Fox	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-11 is/are rejected.
- 7) ☒ Claim(s) 6 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| <p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date <u>20060615</u>.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____.</p> |
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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bayne in view of Redding et al. Regarding claims 1-3,5,7-9,11 Bayne US 5,308,211 discloses a lifting device comprising:

- a base (180);
- a face plate (100) pivotally attached to said base;
- a rotary actuator (166) mounted between said base and face plate for raising and lowering said face plate relative to said base;
- at least one actuator arm (192,194) connecting said actuator to said faceplate;
- a latch assembly mounted on said face plate;
- said latch having an upper member (116) and a spring biased lower member(110);

wherein when said faceplate is raised said lower member is moved via arm (228) to engage a lower section of a container. Bayne does not teach the upper latch member as being fixed. Redding et al. US 5,024,573 teaches a lift device comprising:

- a face plate (96);
- an actuator(100) for raising and lowering said face plate;
- upper and lower latching means (116,88) on said face plate;

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wherein said upper latching means is fixed on said face plate and said lower latching means is pivotal relative to said face plate;

wherein when said face plate is raised said lower member is moved to engage a lower section of a container. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Bayne with a fixed upper latch member as taught by Redding et al. in order to simplify the operation of the device using an element that is well known in this art for performing the function of lifting a trash container.

Regarding claims 4 and 10 Bayne further teaches said base having supports (238,240) wherein a first end of an actuator arm are mounted thereto.

Response to Arguments

Applicant's arguments filed June 15, 2006, with respect to the 102(b) rejections over Redding '110 have been fully considered and are persuasive. The 102(b) rejections of claims 1-12 have been withdrawn.

Applicant's arguments filed June 15, 2006 regarding the 103(a) rejections have been fully considered but they are not persuasive. Regarding the actuator arm not being operatively connected to the hook this is incorrect. In the instant invention the operative connection between an actuation arm and the hook is made via a slide plate the hook is mounted upon. The Bayne reference teaches this very same operative connection. Also claim 1 does not claim an operative connection between the actuation arm and the hook as argued. Regarding the passage referenced by the applicant, this is dealing with only one type of container that does not have a lower handle. When the device

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operates it starts with the hook and slide in a retracted position and as it lifts the actuator arm moved the slide and hook to an extended operative position where it engages a lower handle of a cart. If the lower hook did not retract via the slide mechanism it would not be able to release the cart. As such it does retract due to an operative connection to an actuation arm. The claims stand finally rejected..

Allowable Subject Matter

Claims 6 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The structural limitations presented in claims 6 and 12 when taken in totality with the claims from which they depend would not have been an obvious improvement to the Bayne device.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CAF

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8-29-06



EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
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